

SECOND REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 689
96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Offered March 20, 2012.

Senate Substitute adopted, March 20, 2012.

Taken up for Perfection March 20, 2012. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

5371S.04P

AN ACT

To repeal sections 565.182 and 570.145, RSMo, and to enact in lieu thereof two new sections relating to crimes against certain types of vulnerable persons, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 565.182 and 570.145, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 565.182 and 570.145, to read as follows:

565.182. 1. A person commits the crime of elder abuse in the second degree if he:

(1) Knowingly causes, attempts to cause physical injury to any person sixty years of age or older or an eligible adult, as defined in section 660.250, by means of a deadly weapon or dangerous instrument; or

(2) Recklessly [and] or purposely causes serious physical injury, as defined in section 565.002, to a person sixty years of age or older or an eligible adult as defined in section 660.250.

2. Elder abuse in the second degree is a class B felony.

570.145. 1. A person commits the crime of financial exploitation of an elderly or disabled person if such person knowingly [and] by deception, intimidation, **undue influence**, or force obtains control over the elderly or disabled person's property with the intent to permanently deprive the elderly or disabled person of the use, benefit or possession of his or her property thereby

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

6 benefitting such person or detrimentally affecting the elderly or disabled
7 person. Financial exploitation of an elderly or disabled person is a class A
8 misdemeanor if the value of the property is less than fifty dollars, a class D felony
9 if the value of the property is fifty dollars but less than five hundred dollars, a
10 class C felony if the value of the property is five hundred dollars but less than
11 one thousand dollars, a class B felony if the value of the property is one thousand
12 dollars but less than fifty thousand dollars, and a class A felony if the value of
13 the property is fifty thousand dollars or more.

14 2. For purposes of this section, the following terms mean:

15 (1) "Deception", a misrepresentation or concealment of material fact
16 relating to the terms of a contract or agreement entered into with the elderly or
17 disabled person or to the existing or preexisting condition of any of the property
18 involved in such contract or agreement, or the use or employment of any
19 misrepresentation, false pretense or false promise in order to induce, encourage
20 or solicit the elderly or disabled person to enter into a contract or
21 agreement. Deception includes:

22 (a) Creating or confirming another person's impression which is false and
23 which the offender does not believe to be true; or

24 (b) Failure to correct a false impression which the offender previously has
25 created or confirmed; or

26 (c) Preventing another person from acquiring information pertinent to the
27 disposition of the property involved; or

28 (d) Selling or otherwise transferring or encumbering property, failing to
29 disclose a lien, adverse claim or other legal impediment to the enjoyment of the
30 property, whether such impediment is or is not valid, or is or is not a matter of
31 official record; or

32 (e) Promising performance which the offender does not intend to perform
33 or knows will not be performed. Failure to perform standing alone is not
34 sufficient evidence to prove that the offender did not intend to perform;

35 (2) "Disabled person", a person with a mental, physical, or developmental
36 disability that substantially impairs the person's ability to provide adequately for
37 the person's care or protection;

38 (3) "Elderly person", a person sixty years of age or older;

39 (4) "Intimidation", a threat of physical or emotional harm to an elderly or
40 disabled person, or the communication to an elderly or disabled person that he
41 or she will be deprived of food and nutrition, shelter, prescribed medication, or

42 medical care and treatment;

43 **(5) "Undue influence", use of influence by someone who exercises**
44 **authority over an elderly person or disabled person in order to take**
45 **unfair advantage of that persons's vulnerable state of mind, neediness,**
46 **pain, or agony. Undue influence includes, but is not limited to, the**
47 **improper or fraudulent use of a power of attorney, guardianship,**
48 **conservatorship, or other fiduciary authority.**

49 3. Nothing in this section shall be construed to limit the remedies
50 available to the victim pursuant to any state law relating to domestic violence.

51 4. Nothing in this section shall be construed to impose criminal liability
52 on a person who has made a good faith effort to assist the elderly or disabled
53 person in the management of his or her property, but through no fault of his or
54 her own has been unable to provide such assistance.

55 5. Nothing in this section shall limit the ability to engage in bona fide
56 estate planning, to transfer property and to otherwise seek to reduce estate and
57 inheritance taxes; provided that such actions do not adversely impact the
58 standard of living to which the elderly or disabled person has become accustomed
59 at the time of such actions.

60 6. It shall not be a defense to financial exploitation of an elderly or
61 disabled person that the accused reasonably believed that the victim was not an
62 elderly or disabled person.

63 **7. (1) It shall be unlawful in violation of this section for any**
64 **person receiving or in the possession of funds of a Medicaid eligible**
65 **elderly or disabled person residing in a facility licensed under chapter**
66 **198 to fail to remit to the facility in which the Medicaid eligible person**
67 **resides all money owing the facility resident from any source,**
68 **including, but not limited to, social security, railroad retirement, or**
69 **payments from any other source disclosed as resident income contained**
70 **in the records of the department of social services, family support**
71 **division or its successor. The department of social services, family**
72 **support division or its successor is authorized to release information**
73 **from its records containing the resident's income or assets to any**
74 **prosecuting or circuit attorney in the state of Missouri for purposes of**
75 **investigating or prosecuting any suspected violation of this section.**

76 **(2) The prosecuting or circuit attorney of any county containing**
77 **a facility licensed under chapter 198, who successfully prosecutes a**

78 violation of the provisions of this subsection, may request the circuit
79 court of the county in which the offender admits to or is found of guilty
80 of a violation, as a condition of sentence and/or probation, to order
81 restitution of all amounts unlawfully withheld from a facility in his or
82 her county. Any order of restitution entered by the court or by
83 agreement shall provide that ten percent of any restitution installment
84 or payment paid by or on behalf of the defendant or defendants shall
85 be paid to the prosecuting or circuit attorney of the county successfully
86 prosecuting the violation to compensate for the cost of prosecution
87 with the remaining amount to be paid to the facility.

Unofficial

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Bill

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